IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

Crl.Rev.Pet.No. 43 of 2007()

CRA.245/2006 of III ADDL.SESSIONS COURT, KOLLAM
CC.833/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, PUNALUR

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REVN. PETITIONER: APPELLANT/ACCUSED

SURESH, S/O.SUNDARESAN,
RESIDING AT QUARTER NO.16, OIL PALM N.S.QUARTERS,
BHARATHEEPURAM P.O., YEROOR, PATHANAPURAM.

BY ADV. SRI.SUNNY XAVIER

RESPONDENTS: COMPLAINANT

1. K.VIKRAMAN, S/O.KOCHU PILLAI,
   VADAKKUMKARA PUTHEN VEEDU, MARTHANDAMKARA PO,
   PATHANAPURAM.

2. STATE OF KERALA, REP. BY THE PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SHIR SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 43 OF 2007

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Dated this the 4th day of January, 2007

O R D E R

Heard.

2. Both courts have concurrently found that petitioner had borrowed money from first respondent and issued Exhibit P1 cheque in respect of a legally recoverable debt. It was also concurrently found that when the cheque was presented for payment, same was dishonoured on account of insufficiency of funds in the account. Notice disowning repayment of money covered by cheque was issued to accused. He received same. He neither replied nor repaid the amount. Those are questions of fact. Sessions court also concurred with the findings of the learned Magistrate. Hence I do not find any reason to interfere with the findings of courts blow that petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. The conviction is also confirmed.

3. Considering the facts and circumstances of the case, I

am of the view that legality and propriety of the sentence imposed can be considered in this Criminal Revision Petition. So Criminal Revision Petition is admitted for that limited purpose alone. It is not necessary to issue notice to first respondent. Criminal Revision Petition is disposed of after hearing counsel for petitioner and Public Prosecutor.

4. Complaint is that accused borrowed a sum of Rs.25,000/- and issued Exhibit P1 cheque. Contention raised was that only an amount of Rs.18,000/- was borrowed. Petitioner adduced some evidence also before the trial court. But courts below did not accept that contention. So he was found guilty of the offence, convicted and sentenced to undergo simple imprisonment for one month and to pay a compensation of Rs.25,000/-. In default of payment of compensation, petitioner was directed to undergo simple imprisonment for 3 more months.

5. Considering the facts and circumstances of the case, I am of the view that substantive sentence imposed can be reduced as imprisonment till rising of the court. Though I do not find any reason to interfere with the compensation awarded, default sentence imposed on account of non-payment of

compensation is reduced to 1 month instead of 3 months.

6. In the result, Criminal Revision Petition is disposed of as follows:

7. The findings of the courts below that petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act are confirmed. But the sentence imposed is modified. Substantive sentence of 1 month imposed on the petitioner is reduced as imprisonment till rising of the court. Compensation awarded is confirmed. Sentence imposed in case of default of payment of compensation is modified and reduced to 1 month instead of 3 months.

Counsel for petitioner prayed for three months' time to pay the compensation awarded. Request is reasonable. So, petitioner is granted three months' time from today to pay the compensation awarded and suffer the substantive sentence imposed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.

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O R D E R

4TH JANUARY, 2007